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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/928,792	08/13/2001	Keith E. Olson	163.1213US01	8268

23552 7590 07/12/2005

MERCHANT & GOULD PC
P.O. BOX 2903
MINNEAPOLIS, MN 55402-0903

EXAMINER

HARDEE, JOHN R

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/928,792

Applicant(s)

OLSON ET AL.

Examiner

John R. Hardee

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6, 10, 11, 13-17, 20, 22, 23 and 26-28 is/are pending in the application.
- 4a) Of the above claim(s) 3, 11, 13, 15-17, 20, 22, 23, 26 and 27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 6, 10, 14 and 28 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Election/Restrictions

1. Claims 3, 11, 13, 15-17, 20, 22, 23, 26 and 27 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected composition, there being no allowable generic or linking claim.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1, 2, 4, 6, 10, 14 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miracle et al., US 5,576,282. The reference discloses bleaching compositions which may be formulated as granular or powder form laundry detergents, or they may be tabletted or granular automatic dishwashing detergents (col. 11, lines 30+). Highly preferred compositions comprise about 5% to about 80% of surfactants (col. 10, lines 5-7). The compositions typically comprise builders, such as tripolyphosphates, carbonates, bicarbonates and sesquicarbonates (col. 12, lines 18+). Use of phosphonates is specifically disclosed at col. 12, line 32 and col. 14, lines 34+. Aminocarboxylate chelants (builders) are disclosed at col. 20, lines 5+. Solid compositions typically comprise 10-80% of builders. Use of combinations of ingredients, each disclosed as being used for the same purpose, is obvious, absent unexpected results. Preferred detergent compositions comprise mixtures of nonionic and anionic surfactants (col. 10, lines 10+). Addition of enzymes is disclosed at col. 9, line 61. The

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compositions can be formulated in any mixing, densifying and granulating equipment that is currently available. Use of an aqueous slurry is disclosed at col. 30, lines 35+.

This makes obvious the use of water to bring about reaction of carbonate and bicarbonate, and anything dried out of an aqueous slurry would perforce be hardened. The examiner takes the position that extruders are commonly used mixing equipment in the surfactant art. Packaging of detergent compositions is standard practice and therefore an obvious expedient. This reference differs from the claimed subject matter in that it does not disclose a composition which reads on applicant's claims with sufficient specificity to constitute anticipation.

It would have been obvious at the time the invention was made to make such a composition, because this reference teaches that all of the ingredients recited by applicants are suitable for inclusion in a solid detergent composition. The person of ordinary skill in the surfactant art would expect the recited compositions to have properties similar to those compositions which are exemplified, absent a showing to the contrary. Regarding the "20 minute" limitations, these recite the physical properties of the compositions. Applicant is reminded that "up to about 100 degrees" includes all temperatures below 100 degrees. As the material limitations of the recited compositions can be met by following the teachings of the reference, it would appear that the physical limitations would or could follow inherently. It is well settled that the properties of a composition are not separable from its chemical makeup. Carbonates, bicarbonates and sesquicarbonates are clearly water conditioners, as they affect the pH of the compositions into which they are dissolved. Regardless of whether or not the carbonate,

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bicarbonate, sesquicarbonate and water are being disclosed as builders or binders, their use in the recited percentages is clearly motivated by the teachings of the reference.

In the case where the claimed ranges overlap or lie inside ranges disclosed by the prior art, a *prima facie* case of obviousness exists. *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); *In re Woodruff*, 919 F.2d 1575, 16 USPQ2d 1934 (Fed Cir. 1990).

Response to Arguments

4. Applicant's arguments filed June 25, 2005 have been fully considered but they are not persuasive. Applicant argues that the reference does not disclose the percentages of phosphonate, aminocarboxylate, carbonate or bicarbonate presently recited, and that it would therefore not be obvious to use those percentages. This is not persuasive because the reference teaches that all of these materials are equivalents, and the use of mixtures of any of the disclosed builders, in any total percentages which fall within the disclosed ranges would be obvious in the absence of any unexpected results. Applicant further argues that the reference does not teach solid compositions which melt at 100 degrees F or higher. This is not persuasive because compositions according to the reference can contain as little as "about 1%" of surfactant, and the examiner notes that 100 degrees F is not particularly hot, being only slightly above body temperature. The reference provides motivation to use the same builders in the same amounts as applicants, and surfactants in the same amounts as applicants, so it would

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appear that if such a composition does not melt at 100 degrees F when the applicants make it, it would not melt at 100 degrees F when made according to the reference.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to the examiner, Dr. John R. Hardee, whose telephone number is (571) 272-1318. The examiner can normally be reached on Monday through Friday from 8:00 until 4:30. In the event that the examiner is not available, his supervisor, Dr. Yogendra Gupta, may be reached at (571) 272-1316.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "J. Hardee", with a stylized, cursive script.

John R. Hardee
Primary Examiner
July 6, 2005